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In The  
**Supreme Court of the United States**  
October Term, 1997

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HON. THOMAS R. PHILLIPS, *et al.*,  
*Petitioners,*  
v.

WASHINGTON LEGAL FOUNDATION, *et al.*,  
*Respondents.*

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On Writ Of Certiorari  
To The United States Court Of Appeals  
For The Fifth Circuit

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BRIEF OF THE ASSOCIATION FOR  
OBJECTIVE LAW AS AMICUS CURIAE  
SUPPORTING RESPONDENTS

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20 pp

## TABLE OF CONTENTS

	Page
INTEREST OF AMICUS CURIAE .....	1
SUMMARY OF ARGUMENT.....	1
ARGUMENT .....	2
A. Summary of the Texas IOLTA Program .....	2
B. The Importance of Property Rights.....	4
CONCLUSION .....	15

## TABLE OF AUTHORITIES

	Page
CASES	
<i>Andrus v. Allard</i> , 444 U.S. 51 (1979) .....	12
<i>Bayard v. Singleton</i> , 1 Martin 42 (N.C. 1797) .....	9
<i>Berman v. Parker</i> , 348 U.S. 26 (1954) .....	12
<i>Citizens' Savings &amp; Loan Association v. Topeka</i> , 20 Wall. (87 U.S.) 655 (1874) .....	14
<i>City of Oakland v. Oakland Raiders</i> , 32 Cal.3d 60, 183 Cal.Rptr. 673, 646 P.2d 835 (1982) .....	12
<i>Edwards v. California</i> , 314 U.S. 160 (1941) .....	6
<i>Everson v. Board of Education</i> , 330 U.S. 1 (1947) .....	4
<i>Grand Rapids School District v. Ball</i> , 473 U.S. 373 (1985) .....	4
<i>Griswold v. Connecticut</i> , 381 U.S. 479 (1965) .....	6
<i>Grosjean v. American Press Co.</i> , 297 U.S. 233 (1936) .....	5
<i>Hawaii Housing Authority v. Midkiff</i> , 467 U.S. 229 (1984) .....	12
<i>Liggett &amp; Myers Tobacco Company v. United States</i> , 274 U.S. 215 (1927) .....	12
<i>Miami Herald Publishing Co. v. Tornillo</i> , 418 U.S. 241 (1974) .....	5
<i>New York Times Co. v. Sullivan</i> , 376 U.S. 254 (1964) .....	5
<i>Pierce v. Society of Sisters</i> , 268 U.S. 510 (1925) .....	5
<i>PruneYard Shopping Center v. Robins</i> , 447 U.S. 74 (1980) .....	5
<i>Stanley v. Georgia</i> , 394 U.S. 557 (1969) .....	5

## TABLE OF AUTHORITIES - Continued

	Page
<i>West Virginia State Board of Education v. Barnette</i> , 319 U.S. 624 (1943) .....	5
<i>Wooley v. Maynard</i> , 430 U.S. 705 (1977) .....	5
STATE RULES	
Rules Governing the Operation of the Texas Equal Access to Justice Program, Rule 15 .....	3
BOOKS	
Charles Francis Adams (ed.), <i>The Works of John Adams, Second President of the United States</i> (1851) .....	8
William Blackstone, <i>Commentaries on the Laws of England</i> (1979) .....	7
Henry Steele Commager, <i>Documents of American History to 1898</i> (1963) .....	5
Harold Holzer (ed.), <i>The Lincoln-Douglas Debates</i> (1993) .....	9
John Locke, <i>The Second Treatise of Government</i> (1952) .....	7
Ayn Rand, <i>The Virtue of Selfishness</i> (1964) .....	9, 13
Ayn Rand, <i>Atlas Shrugged</i> (1985) .....	6, 13, 14
Joseph Story, <i>Story's Commentaries on the Constitu- tion of the United States</i> (1833) .....	9



## TABLE OF AUTHORITIES – Continued

Page

## MISCELLANEOUS

Brief of Conference of Chief Justices .....	3
Petitioners' Brief.....	10
Movie, <i>It's a Wonderful Life</i> .....	10
Declaration of Independence .....	13
<i>Note, Constitutional Law – Use of the Police Power for the Attainment of Aesthetic Considerations</i> , 33 N. Car. L. Rev. 482 (1955).....	12

INTEREST OF AMICUS CURIAE<sup>1</sup>

THE ASSOCIATION FOR OBJECTIVE LAW (TAFOL) is a Missouri non-profit corporation whose purpose is to advance Objectivism, the philosophy of Ayn Rand, as the basis of a proper legal system. TAFOL's supporters are lawyers, law students and others, some residing in Texas, who subscribe to Ayn Rand's philosophy and who would suffer harm should this Court reverse the decision of the court below. The non-lawyers are clients and potential clients of lawyers. In the ordinary course of events, their lawyers would hold some of their money in a trust account. Under IOLTA, the proceeds of this money would be used for programs which work against their self-interest. The lawyer supporters would be conscripted to assist in what amounts to theft of their clients' property.

## SUMMARY OF ARGUMENT

TAFOL's opposition to the IOLTA program is based on Ayn Rand's political principles which are, of necessity,

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<sup>1</sup> All parties to the within action have consented to the filing of the brief, and letters containing these consents have been filed with the Clerk of this Court.

No counsel for any party to the within action has authored this brief in whole or in part. Respondent, Michael J. Mazzone, is president of amicus curiae, The Association for Objective Law; he provided criticism and editorial comments of drafts of the brief. The Association for Objective Law has borne all costs of preparation and submission of this brief; there have been no monetary contributions in connection with the preparation of this brief from any party to this case or from any other person or entity.

based on her metaphysics, epistemology and ethics. The basis of her ethical theory is rational self-interest. Its economic-political consequence is laissez-faire capitalism. Each individual has the absolute right to his own life. This necessitates control over his property without interference so long as he does not violate anyone else's rights. The sole function of government is to protect all rights, especially the right of property.

The IOLTA program is based on the opposite moral premise: that man is obligated to serve others. The political consequence of this premise is that one may be forced to support others. Many, if not most, of the suits supported by IOLTA money are directed at enforcement of what are euphemistically called "entitlements," i.e., forcing those who have money to support those who do not, IOLTA is a program that violates rights; it is a reversal of the proper function of government.

It will be shown by quotations from English and American intellectual leaders throughout the years that the American system of government is implicitly based on Objectivist principles. Because the IOLTA program conflicts with these principles, it cannot be upheld.

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## ARGUMENT

### A. Summary of the Texas IOLTA Program

William R. Summers is a businessman who regularly hires lawyers to represent him. As a condition of their representation, these lawyers require him to advance retainer fees which are held in trust accounts. In addition to retainer fees, these accounts typically contain clients'

money held for investment purposes and money held pending distribution.

The law at issue in this case requires that the money in these accounts be made available to earn interest to provide legal services to low-income persons. Typical of the uses of the money are suits

to secure entitlement to benefits such as, but not limited to, social security, aid to families with dependent children, food stamps, special education for the handicapped, Medicare, Medicaid, subsidized or public housing, or other economic, shelter or medical benefits provided directly to indigent individuals.

Rules Governing the Operation of the Texas Equal Access to Justice Program, Rule 15, J.A. 118-119.

No one ever asked Mr. Summers whether he wanted his money to be used to generate income to support these suits. When he complained, he found the chief justice of every state in the country declaring his claim of ownership a "fantasy," sneering at his money as "paltry," referring to him as "silly."<sup>2</sup> His lawyers were not given the freedom to determine how their accounts were to be used, nor whether they were willing to keep records for the benefit of the favored. Nor were the bankers asked whether giving the interest, and keeping the records, is economical.

The IOLTA program thus takes proceeds of the efforts of Mr. Summers, and of others in positions similar to him. It conscripts the efforts and resources of lawyers

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<sup>2</sup> Brief of Conference of Chief Justices 8, 12.

and banks, making them aiders and abettors in the confiscation of their clients' money.

### B. The Importance of Property Rights

The *fundamental* problem with the IOLTA program is its ethical premise: that man has an obligation to serve others. The political consequence of this premise is that the state of Texas may declare that, unless Mr. Summers chooses to forego effective legal representation, he must put his funds at the disposal of the state. His own concerns are unimportant.

The alternative moral basis is the ethics of rational self-interest. Each individual has a moral right to his own life. He decides how he is to expend his efforts and how the results of these efforts are to be used. The political consequence of this ethical theory is a limited government whose sole function is to secure liberty. The right to property is central to the implementation of this function. To the extent a man is forced to let someone else use his belongings, he is not free.

Consider the following examples:<sup>3</sup>

- The prohibition of an established religion is essentially a rule that the state may not take one's property to support religion. *Grand Rapids School District v. Ball*, 473 U.S. 373, 385, 392 (1985); *Everson v. Board of Education*,

<sup>3</sup> The cases in the following list are cited, not as authority, but as illustrations of the statements with which they are associated.

330 U.S. 1, 11-12, 16 (1947); *Virginia Statute of Religious Liberty* (1786), Henry Steele Commager, *Documents of American History to 1898* (1963) 125.

- The free exercise of religion requires the ability to construct and control buildings and to profit from business relationships. *Pierce v. Society of Sisters*, 268 U.S. 510, 532, 534, 535 (1925).
- Without complete control over property, every businessman serving the public can be, and many are, forced to support views to which he is opposed, despite the rule of *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), *Wooley v. Maynard*, 430 U.S. 705 (1977), and *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 85 et seq. (1980).
- Freedom of the press requires control over printing presses, buildings to house them, newsprint, trucks, and money (*Grosjean v. American Press Co.*, 297 U.S. 233 (1936)) as well as confidence that the proceeds of the sales of newspapers will not be taken because of disagreements with what is published (*New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)).
- No one can sit alone in his own house and peacefully read pornography without the ability to lock the doors against those who disapprove. *Stanley v. Georgia*, 394 U.S. 557 (1969).
- The protection of the "intimate relation of husband and wife and their physician's role



in one aspect of that relation" (*Griswold v. Connecticut*, 381 U.S. 479, 482 (1965)) concerns nothing more than the ability to exchange money for physical items.

- To travel from place to place, one must have control over an automobile and money to buy gasoline, to maintain the automobile, and to buy food and shelter on the way. *Edwards v. California*, 314 U.S. 160 (1941).

Each of these examples illustrate the fact that control over physical objects – the right to exclude others from one's property – is the essence of property rights. In each case, this Court was asked to protect an intellectual or abstract right. (Sometimes the request was successful, sometimes not.) In fact, each of these claims was a demand for undisturbed control over property. This control is necessary for the free exercise of any human activity:

Just as man can't exist without his body, so no rights can exist without the right to translate one's rights into reality – to think, to work and to keep the results – which means: the right of property. . . . Only a ghost can exist without material property; only a slave can work with no right to the product of his effort. . . .

The source of property rights is the law of causality. All property and all forms of wealth are produced by man's mind and labor. As you cannot have effects without causes, so you cannot have wealth without its source: without intelligence.

Ayn Rand, *Atlas Shrugged* (1985) 1062.

The right of property is one of the foundations of the United States. Its importance was stated by the nation's intellectual grandfather:

The great and chief end, therefore, of men's uniting into commonwealths and putting themselves under government is the preservation of their property.

John Locke, *The Second Treatise of Government* (1952) 71 (§ 124).

Its importance is reflected in the common law:

So great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the good of the whole community. If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men, to do this without consent of the owner of the land. In vain may it be urged, that the good of the individual ought to yield to that of the community; for it would be dangerous to allow any private man, or even any public tribunal, to be the judge of this common good, and to decide whether it be expedient or no. Besides, the public good is in nothing more essentially interested, than in the protection of every individual's private rights, as modelled by the municipal law.

1 William Blackstone, *Commentaries on the Laws of England* (1979) \*135.<sup>4</sup>

<sup>4</sup> Blackstone continues with the observation that the state does condemn property. "[A]nd even this is an exertion of

Its importance was understood by the Founding Fathers:

[T]he original meaning of the word *republic* could be no other than a government in which the property of the people predominated and governed; and it had more relation to property than liberty. It signified a government, in which the property of the public, or people, and of every one of them, was secured and protected by law. This idea, indeed, implied liberty; because property cannot be secure unless the man be at liberty to acquire, use, or part with it, at his discretion, and unless he have his personal liberty of life and limb, motion and rest, for that purpose.

John Adams, *Defence of the Constitutions of Government of the United States* in 5 Charles Francis Adams (ed.), *The Works of John Adams, Second President of the United States* (1851) 454.

Its importance was understood by early courts:

The Court made a few observations on our constitution and system of government. . . .

That by the constitution every citizen had undoubtedly a right to a decision of his property by a trial by jury. For that if the Legislature could take away this right and require him to stand condemned in his property without a trial, it might with as much authority require his life to be taken away without a trial by jury, and that he should stand condemned to die, without the formality of any trial at all: that if the members of the General Assembly could do this, they

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power, which the legislature indulges with caution, and which nothing but the legislature can perform."

might with equal authority, not only render themselves the Legislators of the State for life, without any further election of the people, but from thence transmit the dignity and authority of legislation down to their heirs male forever.

*Bayard v. Singleton*, 1 Martin 42, 45 (N.C. 1797).

Its importance was stated in early treatises:

[Protection of private property] is founded on natural equity, and is laid down by jurists as a principle of universal law. Indeed, in a free government, almost all other rights would become utterly worthless, if the government possessed an uncontrollable power over the private fortune of every citizen. One of the fundamental objects of every good government must be the due administration of justice; and how vain it would be to speak of such an administration, when all property is subject to the will or caprice of the legislature, and the rulers.

3 Joseph Story, *Story's Commentaries on the Constitution of the United States* (1833) § 1784 (footnotes omitted).

Its importance was understood by presidents: "[The principle of slavery] says you work, you toil, you earn bread, and I will eat it." Abraham Lincoln in the last Lincoln Douglas Debate, October 15, 1858, Harold Holzer (ed.) *The Lincoln-Douglas Debates* (1993) 359.

Its importance has been stated in a single sentence: "Without property rights, no other rights are possible." Ayn Rand, "Man's Rights" in *The Virtue of Selfishness* (1964) 94.

The IOLTA program is inconsistent with support for property rights. Its defenders claim that it creates interest



without disturbing principal. But it is exclusive control over principal that makes interest possible. One makes interest by agreeing to relinquish, for a period of time, the right to prevent others from using his money. This is the reason that interest follows principal.

This point is revealed in Petitioners' use of a speech from the movie, *It's a Wonderful Life*.<sup>5</sup> The ideal of this movie is embodied in the character of Peter Bailey, a man who owns a small town savings and loan association which he operates by lending to those in need. His life consists of sacrificing himself and his family for the benefit of his neighbors. When he dies, his son, George, continues in his footsteps.

George Bailey is the hero of the movie. As a young man, he has passionate ambitions to leave the town in which he grew up, to attend college, and to design buildings and cities. Step by step, he sacrifices his ambitions to keep the savings and loan in business so that it can continue to lend to his neighbors.

This movie views self-interest as evil. It is opposed to intelligence, common sense, ambitiousness, and success. The only successful, wealthy character is a banker who is portrayed as incredibly mean, nasty, dishonest, miserable, and totally lacking in ethical principles.

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<sup>5</sup> "You're thinking of this place all wrong, as if I had the money back in the safe. The money's not here. Well, your money's in Joe's house - that's right next to yours - and in the Kennedy house, and Mrs. MacLain's house, and a hundred others." Petitioner's Brief at 30.

The scene summarized by Petitioners involves George Bailey's last sacrifice. He is just about to leave town for his honeymoon when he is interrupted with news that there is a run on his savings and loan. His neighbors, in a panic, are threatening to withdraw their money. The speech quoted by Petitioners is the beginning of his attempt to dissuade them. At first, it appears that he will fail, but he succeeds with the use of eloquence and by lending to the depositors the money he had saved for his honeymoon.

The IOLTA program shares this movie's ethical premises. Those who have wealth are expected to sacrifice for the benefit of those who do not. The IOLTA program, however then adds the inevitable political consequence of the ethical principle: force. Whereas George Bailey had to persuade his depositors to put their money to charitable uses, those running the IOLTA program use the power of the state. The movie's speech as delivered by one running the IOLTA program would read:

You're thinking of this program all wrong, as if you have a right to the control of your money. Mr. Landlord, you have no choice, you must support your tenants' suits against you. Mr. Taxpayer, you have to support lawyers' bringing suits to force you to pay more for welfare. Mr. Voter, I know you're opposed to racial quotas; that doesn't matter, you have no choice; your money will go to organizations devoted to overturning your vote in the courts. Mr. Employer, don't you dare tell us we can't force you to support the suit that prevents you from firing the incompetent employee - the employee whose actions will subject you to a million dollar harassment suit.

These ethical principles are behind every governmental program that takes from those who have and gives to those who do not. As a result of their acceptance, limitations on the powers of American state and federal governments have all but disappeared. Nothing now prevents any American government from taking property for any purpose. It may take real property to improve the beauty of its neighborhood: *Berman v. Parker*, 348 U.S. 26 (1954); *Note, Constitutional Law – Use of the Police Power for the Attainment of Aesthetic Considerations*, 33 N.Car. L. Rev. 482, 484 (1955). It may take tobacco products for use by soldiers: *Liggett & Myers Tobacco Company v. United States*, 274 U.S. 215 (1927). It may take a sports team on grounds that its citizens want to watch football: *City of Oakland v. Oakland Raiders*, 32 Cal.3d 60, 183 Cal.Rptr. 673, 646 P.2d 835 (1982). It may take property on grounds that the owner has more than the envious deem appropriate: *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984). It may make someone's legally produced property suddenly worthless: *Andrus v. Allard*, 444 U.S. 51 (1979).

In the instant case, this Court can take the first step in restoring the government's proper function. To do so, one begins by examining the nature of man in civilized society:

The basic *social* principle of the Objectivist ethics is that just as life is an end in itself, so every living human being is an end in himself, not the means to the ends or the welfare of others – and, therefore, that man must live for his own sake, neither sacrificing himself to others nor sacrificing others to himself \* \* \*

Can man derive any personal benefit from living in a human society. Yes – if it is a *human* society. \* \* \* The basic political principle of the Objectivist ethics is: no man may *initiate* the use of physical force against others. No man – or group or society or government – has the right to assume the role of a criminal and initiate the use of physical compulsion against any man. Men have the right to use physical force *only* in retaliation and only against those who initiate its use.

Ayn Rand, "The Objectivist Ethics" in *The Virtue of Selfishness* (1964) 27, 32-33.

Proper governments exist to prevent the initiation of force and to control its retaliatory use.

The only proper purpose of a government is to protect man's rights, which means: to protect him from physical violence. A proper government is only a policeman, acting as an agent of man's self-defense, and, as such, may resort to force *only* against those who *start* the use of force. The only proper functions of government are: the police, to protect you from criminals; the army, to protect you from foreign invaders; and the courts, to protect your property and contracts from breach or fraud by others, to settle disputes by rational rules, according to *objective* law.

Ayn Rand, *Atlas Shrugged* (1985) 1062-3.

In the words of the Declaration of Independence, "to secure these rights, Governments are instituted among men."

The IOLTA program is an example of government acting against its essential purpose, initiating force rather than preventing it. Mr. Summers, and those like him, are forced to use their property for purposes which they do not support.

But a government that *initiates* the employment of force against men who had forced no one, the employment of armed compulsion against disarmed victims, is a nightmare infernal machine designed to annihilate morality: such a government reverses its only moral purpose and switches from the role of protector to the role of man's deadliest enemy, from the role of policeman to the role of a criminal vested with the right to the wielding of violence against victims deprived of the right of self-defense.

Ayn Rand, *Atlas Shrugged* (1985) 1063.

In the past, this Court disapproved of depredations of the government upon property:

To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation.

*Citizens' Savings & Loan Association v. Topeka*, 20 Wall. (87 U.S.) 655, 664 (1874). The Court should return to this approach.

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## CONCLUSION

For the reasons stated above, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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